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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
ALEXANDRIA DIVISION

PHIL KISE

DOCKET NO. 13-CV-3293; SEC. P a

VERSUS

JUDGE DEE D. DRELL

WARDEN CARVAJAL

MAGISTRATE JUDGE JAMES D. KIRK

REPORT AND RECOMMENDATION

Before the Court is a pro se petition for writ of habeas corpus filed pursuant to 28 U.S.C. §2241 by Phil Kise. Petitioner is an inmate in the custody of the federal Bureau of Prisons, incarcerated at the Federal Correctional Institution in Pollock, Louisiana (FCI Pollock). He challenges the manner in which the Bureau of Prisons has calculated his sentence, and he seeks a speedier release from custody.

This matter has been referred to the undersigned for review, report, and recommendation in accordance with the provisions of 28 U.S.C. §636 and the standing orders of the Court.

Background

Pursuant to a guilty plea, Petitioner was convicted of conspiracy to distribute and possess with intent to distribute heroin. He was sentenced to 135 months of imprisonment, to run concurrently with Kise's undischarged terms of imprisonment received for related state convictions. On March 14, 2013, pursuant to a motion filed by Kise, the sentencing judge ordered that the sentence be amended to state, specifically, that Petitioner shall receive credit for all time spent in state custody

on case numbers F-0957719 and F-0957720, 282nd Judicial District court of Dallas County, Texas.

Petitioner claims that the Bureau of Prisons has incorrectly computed his sentence and failed to give Kise credit for the time served on a state sentence, as ordered by the federal court. Because Petitioner did not submit evidence of exhaustion of his remedies through the BOP, he was ordered to amend his petition to provide allegations and/or evidence of exhaustion, on or before May 5, 2014. [Doc. #5] To date, no amended petition has been filed by Petitioner, nor has the court received any correspondence or exhibits from Kise.

Law and Analysis

Federal Rule of Civil Procedure Rule (FRCP) 41(b) permits dismissal of claims "[i]f the plaintiff fails to prosecute or to comply with ... a court order...." The district court also has the inherent authority to dismiss an action sua sponte, without motion by a defendant. See Link v. Wabash R.R.Co., 370 U.S. 626, 630-31 (1962). "The power to invoke this sanction is necessary in order to prevent undue delays in the disposition of pending cases and to avoid congestion in the calendars of the [d]istrict [c]ourts." McCullough v. Lynaugh, 835 F.2d 1126, 1127 (5th Cir. 1988). Over one month has passed since the deadline for filing his amended petition, and Plaintiff has failed to comply with the order of April 4, 2014. [Doc. #5]

THEREFORE, IT IS RECOMMENDED that Plaintiff's complaint be DISMISSED WITHOUT PREJUDICE in accordance with FRCP 41(b).

Objections

Under the provisions of 28 U.S.C. §636(b)(1)(c) and Fed.R.Civ.P. 72(b), the parties have fourteen (14) calendar days from service of this Report and Recommendation to file specific, written objections with the clerk of court. A party may respond to another party's objections within fourteen (14) days after being served with a copy thereof. No other briefs or responses (such as supplemental objections, reply briefs etc.) may be filed. Providing a courtesy copy of the objection to the magistrate judge is neither required nor encouraged. Timely objections will be considered by the district judge before he makes his final ruling.

FAILURE TO FILE WRITTEN OBJECTIONS TO THE PROPOSED FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS CONTAINED IN THIS REPORT WITHIN FOURTEEN (14) CALENDAR DAYS FROM THE DATE OF ITS SERVICE SHALL BAR AN AGGRIEVED PARTY, EXCEPT UPON GROUNDS OF PLAIN ERROR, FROM ATTACKING ON APPEAL THE FACTUAL FINDINGS AND LEGAL CONCLUSIONS ACCEPTED BY THE DISTRICT JUDGE TO WHICH THE PARTY DID NOT OBJECT.

THUS DONE AND SIGNED at Alexandria, Louisiana, this 10th day of June, 2014.



JAMES D. KIRK
UNITED STATES MAGISTRATE JUDGE